IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4809 OF 2004

Mr. Abhay V. Kakde ..Applicant.

V/s.

Mr.Harshad Kantilal Bagadia & Anr. ..Respondents.

Shri C.M. Kothari for the Applicant.
Shri S.R.Shinde, APP for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 22, 2004

PC :-

1. Heard. Shri S.R. Shinde, APP waives service for respondent No.2-State. Affidavit of service is filed stating that service is effected on the private Respondent. However, none appears for that Respondent.

2. The short question involved in the present petition is whether any case is made out against the present applicant, accused No.5 in the complaint as filed so as to indicate complicity of the applicant -accused No.5 in the commission of the offence committed by the accused company, a registered partnership firm ? The only allegation that can be

discerned, even on a fair reading of the complaint is that, it is generally stated that accused Nos. 2 to 5 are partners of accused No.1 partnership firm and they are at all material times, responsible for the conduct of business and day to-day affiaris of accused No.1. This allegation is not enough to indicate the complicity of the applicant. Even if he is a partner of the registered firm, that by itself does not make the person liable for the offence committed by the firm. It is not in dispute that the applicant is not the signatory to the cheque in question. Recently, I had occasion to consider the question which is required to be answered in the present application, in the case of Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. in criminal writ petition No. 2241/2004 decided on 14th December, 2004. It is well settled that merely because the person is director of the accused company, does not make him liable for the offence committed by the Company. Something more has to be alleged and established, which is clearly lacking in the present complaint. In other words, no material facts are alleged in the complaint as filed, so as to make the applicant liable within the meaning of section 141 of the Act.

3. As mentioned earlier, no case has been made out in the complaint so as to indicate the complicity of the applicant -accused No.5 in respect of the offence committed by the accused firm within the meaning of section 141 of the Act. If it is so, criminal action cannot be allowed to proceed against the applicant. Accordingly, this application succeeds and the same is allowed in terms of prayer clause (a) to the extent of applicant- accused No.5 only.

4 . Ordered accordingly.

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